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AGENDA ITEM 6

TO: MEMBERS OF THE PERFORMANCE AND COMPENSATION COMMITTEE

- I. SUBJECT:** Implementation of AB 1317
- II. PROGRAM:** Administration
- III. RECOMMENDATION:** Recommend the Board Approve the Proposed Interim Base Salary and Performance Award Schedule for General Counsel
- Further Recommend the Board Approve Phase II of AB 1317 Implementation Proposal
- IV. ANALYSIS:**

Background

Under the provisions of Government Code 20098 and as provided for in the compensation policies administered by this Committee, the CalPERS Board of Administration shall fix the compensation of the Chief Executive Officer, Chief Investment Officer, Chief Actuary and other investment officers and portfolio managers whose positions are designated managerial. Recent legislation (AB 1317) was passed to amend Government Code 20098 to also include the General Counsel position. This amendment, effective January 1, 2008, grants authority to the CalPERS Board of Administration to establish the compensation for the General Counsel position. The legislation is attached (Attachment 1).

The purpose of this agenda item is to recommend a two-phase process for addressing implementation of AB 1317.

Phase I:

- Address the immediate issue of setting an interim market based salary range for the General Counsel position to address internal equity concerns and insure retention of the current incumbent.

Phase II:

- Review and consider amending the policy as it relates to non-investment positions (CEO, Chief Actuary, General Counsel)
- Review the salary data for the General Counsel position in conjunction with the 2008 biennial salary survey
- Develop a new civil service classification for General Counsel to provide for future recruitment outside of State service

Position Background

Historically, the General Counsel position has been classified both as a CEA (Career Executive Assignment) and an exempt. Prior to 1998, the position was a CEA and compensated as such. In July 1998, the position was converted to an exempt. As an exempt, the position received a base salary and performance award established by the CalPERS Board. In June 2003, the General Counsel position was returned to civil service status and was once again classified as a CEA and compensated under the CEA pay scale.

As a CEA, recruitment is limited to individuals who either have permanent civil service status as a State employee or are otherwise permitted by statute to compete in CEA examinations (includes certain exempt appointees of the legislature and the executive branch).

Compensation for CEA positions is set by DPA and cannot exceed a maximum annual salary of \$126,240 for generalists or \$160,572 for attorneys, doctors, and engineers. The current compensation for the General Counsel position is \$160,572 with the potential to earn a performance award of 0-30 percent.

Characteristics of General Counsel Position

The General Counsel position serves as the chief legal advisor to the CalPERS Board of Administration, the CEO, and the organization. As such, the incumbent must have a high degree of program and policy expertise in multiple, complex program areas.

As a member of the Executive Staff, the General Counsel participates in all major policy and planning decisions, including recommendations made to the Board and its committees. The General Counsel's role in this regard is to analyze specific legal risks as well as to offer an enterprise perspective to the issues in question.

The position provides legal counsel and recommendations on a broad and highly complex range of issues, including, but not limited to the following:

- Interpretation and analysis of law in the areas of pensions and trusts, federal tax, California constitutional law, health care, securities, partnerships, real property, corporations, administrative law, open meetings, public records, conflict of interest, community property, contracts and constitutional vested rights
- Litigation strategy
- Development of ethical standards that exceed legal minimums
- Corporate Governance
- Internal Board governance and delegation principles and practices

In addition, the incumbent currently serves as the Chair of the Investment Section of the National Association of Public Pension Plan Attorneys. The duty statement is attached for reference (Attachment 2).

Compensation Policies and Procedures

The Board's Compensation Policies and Procedures do not currently address the determination of base salary or incentive compensation ranges for the General Counsel position.

For the purposes of establishing a recommended salary range for the position at this time, the provisions that apply to setting salaries for the non-investment positions were reviewed, along with general salary setting criteria as stated below.

The Compensation Policies and Procedures for Senior Executives and Investment Management Positions state, in part, that consideration of labor market conditions affecting recruitment and retention will be evaluated, that public and private sector salary data (depending on the position) will be obtained, and that determination of base pay ranges will be based upon:

- Consideration of internal equity factors,
- Relevant marketplace salary survey data gathered every two years,
- A review of relevant data when a position becomes vacant,
- Data gathered with the Performance and Compensation Committee determines a special survey is necessary, or
- Consideration of industry standards and best practices relative to executive compensation

For non-investment executives the policy specifically states:

Chief Executive Officer - salary data is compiled from United States public pension funds most comparable to CalPERS in terms of assets and membership size. The salary range is targeted between the median and 75th percentile of the data.

Chief Actuary - salary data is gathered from private sector top actuarial executive positions with the salary range targeted between the 25th percentile and median of the data.

Phase I – Setting the Salary

In the absence of specific policy language directing the data source, CalPERS staff sought compensation data from Watson Wyatt Worldwide, the Board's compensation consultant, for both public and private sectors.

Watson Wyatt was asked to provide data reflecting the 25th and 75th percentiles and median rates for base salaries and total cash compensation for public funds and insurance and financial service sectors, updated to November 2007.

Public Sector Data

As is the case with the Chief Executive Officer, public sector comparisons for the General Counsel position provided limited direct matches. The pension systems used as comparators are significantly smaller than CalPERS in terms of assets under management (AUM) and significantly more restricted in the nature and scope of programs administered, membership and number of employees. In surveying public sector positions staff looked at the following elements:

- Size (staff, membership, AUM)
- Reporting relationship
- Diversity of programs reporting to position (Legal, Audits, Compliance)
- Diversity of programs administered by pension system (Investments, Health, Actuarial, Corporate Governance)

Watson Wyatt's compensation consultant and staff's review of the public sector data yielded the following competitive compensation information.

| Competitive Cash Compensation | | | | | |
|-------------------------------|-------|---------------|-------|------------------------|-------|
| <u>25th Percentile</u> | | <u>Median</u> | | <u>75th Percentile</u> | |
| Base | Total | Base | Total | Base | Total |
| Salary | Cash | Salary | Cash | Salary | Cash |
| \$98,100 | NA | \$165,600 | NA | \$205,000 | NA |

Watson Wyatt's survey sources are:

Watson Wyatt Data Services (WWDS) report is comprised of medium to large public sector organizations. Comparisons were made to:

- Public Funds – Legal Affairs & Compliance Officer (n=7)

Private Sector Data

While there are also limited direct matches in the private sector for a position with the same responsibilities as the General Counsel, reliable survey information is available from Watson Wyatt sources for legal executives in the insurance and financial service sectors. However, the private sector data gathered for this position yielded a range which is significantly higher in comparison to other non-investment Board reportable positions.

Consequently, given the compaction in the current salary structure for non-investment executives, we believe the public sector data yields a salary range more appropriate for the interim, pending the completion of the 2008 biennial salary survey for all positions.

Additional Considerations

In addition to relevant public and private sector salary data, the following factors concerning internal equity in relationship to other non-investment Board reportable positions were also considered:

- Organizational placement
- Role and responsibilities
- Reporting relationship Incumbent's value to the organization (internal and external)
- Depth and breadth of professional expertise
- Education and professional credentials
- Current salary structure for non-investment executives as displayed in Attachment 2

Base Salary and Performance Award Recommendation

Staff recommends the following:

- Establish a unique General Counsel base salary range targeted around the median and 75th percentile of the public fund data comparable to the policy for the CEO
- Adopt an interim base salary range of \$182,000 - 227,000
- Increase the performance award schedule to 0-40 percent to be consistent with the CEO, Chief Actuary and the Chief Operating Investment Officer

Phase II

Staff recommends the following actions as the second phase of implementing AB 1317:

- Review and consider amending the policy as it relates to non-investment positions (CEO, Chief Actuary, General Counsel)
- Review the salary data for the General Counsel position in conjunction with the 2008 biennial salary survey
- Develop a new civil service classification for General Counsel to provide for future recruitment outside of State service

V. STRATEGIC PLAN:

Under Goal V of the Strategic Plan, CalPERS is committed to sustaining a high performance work culture. This can be accomplished at the highest executive levels through the establishment of methods that provide broad flexibility in the recruitment, retention and compensation of key personnel.

VI. RESULTS/COSTS:

The establishment of incentive plan performance measures is critical to the management of a competitive compensation program for executives at the highest levels of the organization. This, in turn, is critical to the success of the organization. The cost of performance awards that might arise from the recommendations in this item will be funded from existing resources.

Chris O'Brien, Chief
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Gloria Moore Andrews
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Attachments